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No. 07-1127

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IN THE

Supreme Court of the United States

ST. JOHN'S UNITED CHURCH OF CHRIST, HELEN RUNGE, and SHIRLEY STEELE,
Petitioners,

v.

CITY OF CHICAGO, FEDERAL AVIATION ADMINISTRATION, and ROBERT A. STURGELL, Acting Administrator of the Federal Aviation Administration,
Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit

BRIEF FOR RESPONDENT CITY OF CHICAGO IN OPPOSITION

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QUESTION PRESENTED

Whether the Seventh Circuit erred in declining to apply strict scrutiny to Chicago's actions in urging enactment of state legislation to expedite acquisition of real property—including petitioners' cemetery—needed for airport modernization when the legislation, on its face and in operation, treated petitioners no differently from similarly situated non-religious property owners or similarly situated religious entities.

TABLE OF CONTENTS

	Page
QUESTION PRESENTED	i
TABLE OF AUTHORITIES	v
STATEMENT	1
REASONS FOR DENYING THE PETITION	9
I. THIS CASE PRESENTS NO CIRCUIT SPLIT.	11
A. The Decision Below Does Not Conflict With That Of Any Other Circuit.	12
B. The Cases Petitioners Align With The Decision Below Do Not Show A Need For Review Here.	17
II. THE DECISION BELOW IS ENTIRELY FAITHFUL TO THIS COURT'S PRECEDENTS.	20
III. THIS CASE PRESENTS AN EXTRAORDINARILY POOR VEHICLE FOR REVISITING THIS COURT'S FREE EXERCISE JURISPRUDENCE	30
CONCLUSION	34
APPENDIX A:	
Diagram of O'Hare Modernization Program from final Environmental Impact Statement showing new runways and St. Johannes cemetery	1a
APPENDIX B:	
O'Hare Modernization Act	2a

TABLE OF CONTENTS—Continued

Page

APPENDIX C:

Order Dismissing State Court IRFRA Complaints, Circuit Court of the Eighteenth Judicial Circuit, DuPage County, Illinois, dated August 13, 2003 ..... 24a

TABLE OF AUTHORITIES

CASES	Page
Bowen v. Roy, 476 U.S. 693 (1986)	32
Church of Lukumi Babalu Aye, Inc. v. City of Hialeah, 508 U.S. 520 (1993)	*passim*
City of Boerne v. Flores, 521 U.S. 507 (1997)	4
Columbia Union College v. Clarke, 527 U.S. 1013 (1999)	19
Columbia Union College v. Clarke, 159 F.3d 151 (4th Cir. 1998), cert. denied, 527 U.S. 1013 (1999)	19
Employment Division, Department of Human Resources v. Smith, 494 U.S. 872 (1990)	4, 25
Eulitt v. Maine, 386 F.3d 344 (1st Cir. 2004)	18
Fraternal Order of Police Newark Lodge No. 12 v. City of Newark, 170 F.3d 359 (3d Cir.), cert. denied, 528 U.S. 817 (1999)	14, 15
KDM ex rel. WJM v. Reedsport School District, 196 F.3d 1046 (9th Cir. 1999), cert. denied, 531 U.S. 1010 (2000)	17
KDM ex rel. WJM v. Reedsport School District, 210 F.3d 1098 (9th Cir. 2000)	17, 18
Kissinger v. Board of Trustees, 5 F.3d 177 (6th Cir. 1993)	16
Locke v. Davey, 540 U.S. 712 (2004)	10
Lyng v. Northwest Indian Cemetery Protective Ass'n, 485 U.S. 439 (1988)	29, 32
Midrash Sephardi Inc. v. Town of Surfside, 366 F.3d 1214 (2004), cert. denied, 543 U.S. 1146 (2005)	13, 14
Philip v. Daley, 790 N.E.2d 961 (Ill. App. Ct. 2003)	26

TABLE OF AUTHORITIES—Continued

	Page
River Park, Inc. v. City of Highland Park, 703 N.E.2d 883 (Ill. 1998)	32
Shrum v. City of Coweta, 449 F.3d 1132 (10th Cir. 2006)	15, 16
Strout v. Albanese, 178 F.3d 57 (1st Cir.), cert. denied, 528 U.S. 931 (1999)	17
Village of Bensenville v. FAA, 457 F.3d 52 (D.C. Cir. 2006)	6, 25-26, 33
World Wide Street Preachers Fellowship v. Town of Columbia, 245 Fed. Appx. 336 (5th Cir. 2007)	19
STATUTES AND RULES	
42 U.S.C. 2000cc et seq.	5
Ill. Const. art. 4, § 8(d)	27
620 ILCS 65/5	2
775 ILCS 35/1	2
775 ILCS 35/30	5
OTHER AUTHORITIES	
http://www.agl.faa.gov/OMP/ROD.htm	3
Sarah Waszmer, *Taking It Out of Neutral: The Application of* Locke's *Substantial Interest Test to the School Voucher Debate*, 62 Wash. & Lee L. Rev. 1271 (2005)	20

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BRIEF FOR RESPONDENT CITY OF CHICAGO IN OPPOSITION

STATEMENT

This case arises from the City of Chicago's plan to modernize O'Hare International Airport to address longstanding design limitations that cause staggering delays and burden both national air traffic and local and state economies. The O'Hare Modernization Program (OMP) reflects years of work by local, state and federal agencies, and millions of dollars of studies, and requires acquisition of hundreds of privately owned properties, including homes, businesses, and one church-owned cemetery. To facilitate the project, the Illinois General Assembly passed the

O'Hare Modernization Act (OMA), 620 ILCS 65/5, which generally denies effect to all state laws that might otherwise apply to land acquisition and construction in the project area and expressly amends numerous identified statutes, including the Illinois Religious Freedom Restoration Act (IRFRA), 775 ILCS 35/1. Petitioners claim that Chicago violated the Free Exercise Clause when it urged enactment of this measure because IRFRA previously provided for heightened judicial scrutiny of government action incidentally burdening religious exercise. According to petitioners, Chicago targeted and singled out "those who worship at religious cemeteries located adjacent to O'Hare." Pet. 3. The Seventh Circuit held strict scrutiny inapplicable because Chicago's actions in advocating enactment of the OMA and eventually implementing the OMP were neutral in both purpose and effect—far from being singled out, petitioners were treated the same as others whose property was needed for the OMP; they were treated differently only from religiously affiliated landowners elsewhere in the state whose property was not needed for the airport project. The court went on to conclude that petitioners' allegations would fail even on strict scrutiny.

This decision was correct and not in conflict with decisions of any other court. This Court's review is not warranted.

Facts and Proceedings Below

1. Tens of millions of passengers pass through O'Hare every year. Pet. App. 38a. It is "not only one of the busiest airports in the world" but "one of the most congested," with delays "at least twice as bad as that of the next two airports that suffer from excessive delays, Atlanta and Newark." *Id.* at 37a.

Moreover, "[d]elays at O'Hare spark further delays around the country and the world, with serious economic and logistical consequences." *Id.* at 37a-38a. The OMP, announced in June 2001, addresses these chronic delays. *Id.* at 5a. It replaces O'Hare's current intersecting runway layout—designed for Eisenhower-era aviation—with six parallel and two crosswind runways, enabling a constant stream of landings and takeoffs. *Id.* at 5a-6a. As modified, O'Hare will resemble the modern design at other major hubs. *Id.* at 5a.

The OMP requires about 440 acres of land adjacent to O'Hare. FAA Record of Decision (ROD) 34.[1] This area includes 539 private homes, 197 businesses, public facilities, parklands, and St. Johannes Cemetery, which lies directly in the path of new runway 10C/28C. ROD 34, 97.[2] Chicago, the FAA, and relevant state agencies have entered into a memorandum of agreement specifying detailed protocols for relocation of the cemetery. ROD 76; ROD App. B.

2. After the OMP was announced, petitioners—St. John's United Church of Christ, which owns St. Johannes, and two individuals with relatives buried at the cemetery—filed suit in state court under IRFRA. Pet. 6. IRFRA subjects government action burdening religious exercise to more stringent scrutiny than imposed under the Free Exercise

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[1] The ROD is at http://www.agl.faa.gov/OMP/ROD.htm.

[2] A diagram from the final Environmental Impact Statement showing the new runways and the cemetery is reprinted at App., *infra*, 1a. Chicago's original plan also proposed acquiring Rest Haven Cemetery, but it was accommodated in a cargo area. Pet. App. 11a, 17a-18a. After extensive analysis, FAA experts concluded that no alternative design would avoid St. Johannes without compromising the project. *Id.* at 39a, 42a.

Clause, see *Employment Division, Department of Human Resources v. Smith*, 494 U.S. 872 (1990), and was enacted after this Court held the federal Religious Freedom Restoration Act (RFRA), which imposed similar heightened standards, unconstitutional as applied to state and local governments, see *City of Boerne v. Flores*, 521 U.S. 507 (1997). Petitioners contended that Chicago's relocation of the cemetery was not the least restrictive means of accomplishing a compelling state interest. This was one of several state-court actions entangling implementation of the OMP. In another, brought by municipalities near O'Hare, the Circuit Court of DuPage County issued a preliminary injunction against acquisition of property without state approval. Pet. App. 6a-7a.

3. In May 2003, the Illinois General Assembly, responding to concerns that litigation under various state statutes would delay the OMP, enacted the OMA, declaring it "essential that the [OMP] be completed efficiently and without unnecessary delay" and that land acquisition "be completed as expeditiously as practicable." OMA § 5(a)(6), (7).[3] The OMA declares the General Assembly's intent "that all agencies of this State and its subdivisions * * * facilitate the efficient and expeditious completion of the [OMP] to the extent not specifically prohibited by law, and that legal impediments to the completion of the project be eliminated." *Id.* § 5(b).

The OMA authorizes Chicago, "notwithstanding any other law to the contrary," to acquire "for purposes related to" the OMP, "any property" rights, including "any property used for cemetery purposes

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[3] The OMA is reprinted at App., *infra*, 2a-23a.

* * * and to require that the cemetery be removed to a different location." OMA § 15. See also Pet. App. 7a-8a. The OMA also effects express, partial repeals of "more than a dozen laws to remove legal obstacles to O'Hare's expansion." Pet. 7. See also Pet. App. 8a ("every statute that someone thought might stand in the way of the OMP"). These include the Archeological and Paleontological Resources Protection Act (OMA § 90); the Human Skeletal Remains Protection Act (§ 91); several provisions of the Illinois Municipal Code (§ 92); the Downstate Forest Preserve District Act (§ 93); the Illinois Aeronautics Act (§ 94); the Code of Civil Procedure (§ 95); and IRFRA (§ 96). IRFRA's new section 30 provides that "[n]othing in this Act limits the authority of the City of Chicago to exercise its powers under the [OMA] for the purposes of relocation of cemeteries or the graves located therein." 775 ILCS 35/30.

4. After the OMA was enacted, petitioners voluntarily dismissed their state-court suit and filed this federal action. Pet. 7. Petitioners claimed that Chicago had prohibited their free exercise of religion by advocating legislation including the IRFRA amendment. Pet. App. 35a, 84a, 86a.[4] The district court rejected petitioners' Free Exercise claim. *Id.* at 83a-87a. It ruled that the OMA is a neutral law of general applicability to facilitate and expedite the

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[4] Petitioners also asserted claims under the Equal Protection Clause and the federal Religious Land Use and Institutionalized Persons Act (RLUIPA), 42 U.S.C. 2000cc et seq. Along with the two municipalities that had obtained the state-court injunction, they asserted a variety of federal claims against the FAA. And Rest Haven Cemetery asserted the same claims as the other plaintiffs. These claims have all been abandoned.

OMP and "does not single out St. Johannes * * * because of its religious affiliation." *Id.* at 84a.

5. While the case was pending in the district court, the FAA completed its environmental review and approved Chicago's airport layout plan (ALP) pursuant to federal aviation statutes. The FAA compiled a "voluminous" administrative record supporting its decision. *Village of Bensenville v. FAA*, 457 F.3d 52, 73 (D.C. Cir. 2006). Among other issues, the FAA examined petitioners' claim that approving a plan requiring relocation of St. Johannes would violate RFRA. ROD 92. Assuming applicability of RFRA for purposes of analysis, the FAA examined thirteen alternative designs that would avoid relocating the cemetery—including five submitted by petitioners—but concluded that none would fulfill the compelling interest in reducing delays and congestion. ROD 95, 98-102. The FAA therefore determined that Chicago's project satisfied RFRA. ROD 102. The FAA also rejected petitioners' Free Exercise claim. ROD 103-04.

Petitioners, among others, sought review in the D.C. Circuit of the ALP approval and, when the FAA issued a letter of intent (LOI) to provide funding for the OMP, of that decision, too. Petitioners abandoned their Free Exercise claim, arguing only for heightened scrutiny under RFRA. The D.C. Circuit ruled that RFRA did not apply and denied both the petition for review, see *Bensenville,* 457 F.3d at 59-68, and a petition for rehearing en banc. The court also ruled that the LOI was not reviewable and vacating it would not redress petitioners' claimed injury. See *id.* at 68-70.[5]

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[5] Petitioners filed three more petitions for review in the D.C. Circuit from FAA decisions regarding OMP funding. *St. John's*

6. The Seventh Circuit affirmed the dismissal of petitioners' Free Exercise claim against Chicago. The court "accept[ed]" petitioners' representations that relocation of the cemetery was a "'sacrilege to [their] religious faith.'" Pet. App. 31a-32a. Nevertheless, under *Smith* and *Church of Lukumi Babalu Aye, Inc. v. City of Hialeah,* 508 U.S. 520 (1993), the OMA was a neutral law of general applicability not subject to strict scrutiny. The court noted that "to determine whether a law is neutral, as the Court used the term in *Smith*, we must examine the object of the law" to ensure that it does not "'infringe upon or restrict practices because of their religious motivation.'" Pet. App. 29a (quoting *Lukumi*, 508 U.S. at 533). The "related principle of 'general applicability' forbids the government from 'impos[ing] burdens only on conduct motivated by religious belief' in a 'selective manner.'" *Id.* at 29a-30a (quoting *Lukumi*, 508 U.S. at 543). The "text of the OMA" (*id.* at 33a) did not discriminate against or target religious institutions; it provided that "*any* property, religious or otherwise, within the area designated for O'Hare expansion is subject to the extraordinary powers conferred in the OMA" (*id.* at 32a).

The court similarly rejected petitioners' claim that the OMA "singled [them] out" (Pet. App. 40) from those previously protected by IRFRA, noting that "as matters have developed, [St. Johannes] is now the

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United Church of Christ v. FAA, No. 06-1386 (filed November 20, 2006; decided March 21, 2008) (challenging first grant under LOI); *St. John's United Church of Christ v. FAA*, No. 07-1362 (filed September 12, 2007) (challenging approval of passenger facility charges); *St. John's United Church of Christ v. FAA*, No. 07-1435 (filed October 25, 2007) (challenging second grant under LOI).

only cemetery * * * affected" (*id.* at 35-36a), but that "'adverse impact will not always lead to a finding of impermissible targeting'" (*id.* at 36) (quoting *Lukumi*, 508 U.S. at 535). Here, the provision would have applied to any religious cemetery in the project area, and the supposedly different treatment of St. Johannes, in comparison to cemetery properties in other parts of the State, reflects that only St. Johannes "is near O'Hare and * * * the City badly needs the land to construct additional runways." *Id.* at 46a.

The court then examined "available evidence" of the OMA's "object" and concluded that it was not based on any "subtle or masked hostility to religion." Pet. App. 34a. The OMA's "stated purpose" was to eliminate legal impediments to the OMP, and "most" of the statute had "absolutely nothing to do with religion, cemeteries, or IRFRA." *Id.* at 35a. Finally, the court concluded that, even if heightened scrutiny applied, the pressing need to expand O'Hare and the careful consideration of alternatives satisfied that test. See *id.* at 36a-42a.

Judge Ripple dissented. He concluded that the IRFRA amendment triggered strict scrutiny both because "the *only* cemeteries affected * * * are those *religious* cemeteries that the City may seek to relocate" (Pet. App. 60a) and because strict scrutiny applied even to a "facially neutral" law that "imposes a substantial burden on religion" (*id.* at 61a), circumstances he thought were present because "relocation of St. Johannes would force St. John's to forego its religious precepts regarding the burial of its members" (*id.* at 62a).

The Seventh Circuit denied rehearing en banc and a motion to stay the mandate.[6]

REASONS FOR DENYING THE PETITION

One fact controlled the disposition below: Chicago must acquire hundreds of properties to modernize O'Hare. One is a cemetery owned by a church; the rest are private homes and businesses and a few public facilities and parks. Neither the OMA itself nor IRFRA after its amendment treats the church differently from any other property owner in the acquisition area or any other secular owner outside the acquisition area. Likewise, if St. Johannes were located elsewhere in Illinois, petitioners would continue to enjoy full IRFRA protection, while if any other denomination owned a cemetery at the location of St. Johannes, that church would not. As the Seventh Circuit aptly noted, the IRFRA amendment, like Chicago's actions in allegedly procuring it, was based on geography, not religion.[7]

For this reason, the Seventh Circuit's unexceptionable—and entirely correct—decision does not warrant review. The "fundamental question" petitioners claim divides the federal courts—"whether a law that singles out religious activity for differential treatment" (Pet. 2) necessarily triggers strict First

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[6] Chicago has since filed a complaint to condemn St. Johannes and a motion for immediate vesting of title under the "quick-take" provisions of state law.

[7] Petitioners pled their Free Exercise claim solely against Chicago, and they litigated that claim against Chicago alone in the Seventh Circuit. Thus, while the FAA is a respondent in the case (because it was a defendant on other claims), the sole question presented in the petition for certiorari does not concern the FAA.

Amendment scrutiny—is simply not presented here. Nor is there any conflict in the Circuits. Rather, the Seventh Circuit recognized—as does every Circuit—that a law burdening religion triggers strict scrutiny if similarly situated religious claimants are treated differently *or* there is evidence of discriminatory intent.

Petitioners' allegation of conflict with this Court's "Free Exercise jurisprudence" (Pet. 23) adds nothing. Petitioners do not even claim a conflict with any decision other than *Lukumi*—not the Court's landmark decision in *Smith*, nor the post-*Lukumi* decision in *Locke v. Davey*, 540 U.S. 712 (2004), which they discuss in a lone footnote. Even their discussion of the *Lukumi* "jurisprudence" is limited to a concurring opinion, and they find a conflict only by fundamentally misreading both the Seventh Circuit's decision and Justice Scalia's opinion, which addresses a narrow issue having nothing to do with this case. The analysis and result in the court below conflict with no opinion in *Lukumi*—or any decision of this Court, pre- or post-*Lukumi*.

In any event, for many reasons this case represents an extraordinarily poor vehicle for considering any legal issue of general significance. First, this case does not even present the issue on which petitioners seek review. Second, the Seventh Circuit, like the FAA before it, actually undertook the strict scrutiny petitioners seek here and still rejected their claims. Third, petitioners' contention that Chicago's role in obtaining the IRFRA amendment prohibits the free exercise of their religion cannot be likened to any claim ever sustained by any court. Finally, petitioners' challenge to the constitutionality of the OMA in this case, without actually presenting their IRFRA

claim, means that even success in this litigation would be a pyrrhic victory, since the IRFRA rights they seek to reclaim would confront the state-law bar of res judicata.

I. THIS CASE PRESENTS NO CIRCUIT SPLIT.

Petitioners seek review because the Seventh Circuit supposedly held, in conflict with other Circuits, that, without animus or hostility, government action targeting and singling out religion (or one particular religion) is not subject to strict scrutiny. Petitioners claim that in the Third, Sixth, Tenth, and Eleventh Circuits, laws selectively burdening religion (or particular religions) themselves trigger strict scrutiny, without a showing of improper purpose, while other courts have taken the Seventh Circuit's side, requiring proof of hostility even where government action is not neutral toward religion.

Petitioners' claim of conflict misreads the Seventh Circuit's decision. That court did not uphold the targeting of religion. Instead, the court rejected petitioners' claim on its own terms—because petitioners were not singled out. All property owners in the acquisition area were treated alike, and no similarly situated religious claimant retained more rights.

No case petitioners cite applies any different rule. While the Seventh Circuit's application of settled law to the facts of this case would not be certworthy in any event, the result reached below would have been the same in every Circuit.

Nor do the older decisions of the First and Ninth Circuit petitioners cite support their call for review in

this case. First, to the extent those decisions could be read to imply hostility must be shown, even where religion is selectively burdened, the Seventh Circuit rejected that rule. Second, those decisions, addressing Free Exercise challenges to restrictions on funding religious education, did not announce an across-the-broad "hostility" requirement, but grappled with the difficulties particular to that setting, including the government's interest in avoiding establishment of religion. As for the Fifth Circuit, its unpublished decision naturally does not treat the Free Exercise claim in depth but rather generally included it in a broader discussion of free speech and assembly claims leveled at one individual's arrest. Nothing significant can be gleaned from that decision—except that petitioners were bent on magnifying their claim of a circuit split.

A. The Decision Below Does Not Conflict With That Of Any Other Circuit.

The Seventh Circuit did not hold, as petitioners argue repeatedly, that strict scrutiny requires proof of hostility toward religion. See, *e.g.*, Pet. 12, 18, 23, 26. Nor did it "concede[]" that "a law singl[ing] out religion for unequal treatment * * * was not enough." *Id.* at 20. These assertions cannot be squared with the opinion below. The Seventh Circuit explicitly recognized that "'general applicability' forbids the government from 'impos[ing] burdens only on conduct motivated by religious belief.'" Pet. App. 29a-30a (citations omitted). Just as clearly, the court expressly disavowed that under "the inquiry required by *Lukumi* * * * a plaintiff is *required* to allege animus or prejudice * * * to state a free exercise claim." *Id.* at 43a. Instead, it treated evidence of invidious motive as a sufficient, alternative basis for

invalidating (or at least, closely scrutinizing) a neutral law of general applicability (see *id.* at 34a-36a)—a rule especially solicitous of Free Exercise claims. Finally, the court did not reject petitioners' bid for strict scrutiny because they did not allege more than "targeting" or "selective burden," but rather because they failed to allege the kind of selective burdening necessary for a Free Exercise claim—namely, that the OMA treated them differently from other similarly situated property owners. See *id.* at 32a, 36a, 43a-44a.

This precise distinction explains the supposedly conflicting decisions petitioners cite. The Eleventh Circuit, in *Midrash Sephardi, Inc. v. Town of Surfside*, 366 F.3d 1214 (2004), cert. denied, 543 U.S. 1146 (2005), like the Seventh Circuit here, held that proof of hostility or subjective invidious intent is not required (see *id.* at 1234 n.16), but did not hold that every law burdening religious practice is subject to strict scrutiny. Rather, "[z]oning laws * * * restricting religious assemblies to designated districts" (*id.* at 1234) trigger heightened review only when they "treat[] similarly situated secular and religious assemblies differently" (*id.* at 1232). See also *id.* ("unequal treatment indicates the ordinance improperly targets the religious character of an assembly").[8]

The court thus stated the same principle as the Seventh Circuit here. Heightened scrutiny applies if challenged government action dissimilarly treats religious claimants and those who are, in relevant respect, similarly situated. What distinguishes

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[8] Petitioners do not acknowledge that the court in *Midrash* interpreted the "equal terms" provision of RLUIPA, which it assumed was coextensive with constitutional guarantees.

the two cases is not disagreement about the Free Exercise Clause but rather that Surfside, unlike Chicago, did not regulate evenhandedly between religious and secular property owners. Surfside's land-use regulation, based on "retail synergy," was "pursued only against religious assemblies, * * * not other non-commercial assemblies," without any "evidence that private clubs and lodges *actually* contribute to the business district in a way appreciably different than religious institutions." 366 F.3d at 1234. See also *id.* at 1234-35 (citing evidence of underinclusiveness of the restriction). Here, however, there is a glaringly obvious difference between property within and without the acquisition area—only the former is needed to construct the airport. As a result, the differing treatment is not actionable. See *Lukumi*, 508 U.S. at 542-43 ("All laws are selective to some extent, * * * [but] inequality results when a legislature decides that the governmental interests it seeks to advance are worthy of being pursued only against conduct with a religious motivation.").

Likewise, *Fraternal Order of Police Newark Lodge No. 12 v. City of Newark*, 170 F.3d 359 (3d Cir.), cert. denied, 528 U.S. 817 (1999), did not hold that application of a police department's no-beard policy would be subject to strict scrutiny simply because it burdened Muslim officers' religious exercise—or because the policy singled out religious beard-wearing while leaving other religious practices unaffected. Rather, the Third Circuit held that the policy warranted heightened scrutiny because Newark's stated motivation—uniformity—applied to beards worn for religious and non-religious reasons, yet Newark treated religious and non-religious claimants differently for purposes of granting excep-

tions. See *id.* at 364-66. This reflected an impermissible "value judgment that secular (*i.e.*, medical) motivations for wearing a beard are important enough to overcome [the] general interest in uniformity but that religious motivations are not." *Id.* at 366.[9] Here, petitioners challenge no similar "value judgment," and no value judgment was made. Petitioners' cemetery was excluded from IRFRA simply because of where it is located, and Chicago's acquisitions embrace all property, secular and religious, needed to expand O'Hare.

Nor is the decision in *Shrum v. City of Coweta*, 449 F.3d 1132 (10th Cir. 2006), inconsistent. *Shrum* was a qualified immunity appeal in which the police chief accepted, for purposes of appeal, that he made assignments "to force Officer Shrum out, [by] making him choose between his duties as a police officer and his duties as a minister." *Id.* at 1144. The court recognized that if the Sunday morning work assignment was the result of a neutral seniority policy, the Free Exercise claim would fail. See *id.* at 1145. The court nevertheless affirmed the denial of summary judgment based on evidence that the Sunday assignment was "motivated by Officer Shrum's religious commitments" and that a shift exchange with another officer had been denied because of those commitments; such action would not be "neutral" toward religion (*id.* at 1144) and would violate the

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[9] By contrast, as then-Judge Alito also explained, the exemption for undercover officers did not trigger heightened scrutiny. Undercover officers were not similarly situated with respect to the government's "interest in uniformity," and "the Free Exercise Clause does not require the government to apply its laws to activities that it does not have an interest in preventing." *FOP*, 170 F.3d at 366.

Free Exercise Clause without proof of "animus" (*id.* at 1145). Indeed, the Seventh Circuit correctly noted the discriminatory treatment at issue in *Shrum*, but likewise noted that petitioners were not treated differently from other similarly situated property owners. See Pet. App. 43a-44a.

Petitioners' last claim of conflict, based on *Kissinger v. Board of Trustees*, 5 F.3d 177 (6th Cir. 1993), is wrong as well. There, the Sixth Circuit followed a two-step approach similar to the Seventh Circuit's and similarly recognized that "illicit motive is merely a sufficient, not a necessary, condition to trigger strict scrutiny." Pet. 17. Nevertheless, Kissinger's Free Exercise claim failed because she did not identify any veterinary student allowed to graduate without passing the course she found religiously objectionable. See 5 F.3d at 179-80. Here, petitioners' claim failed because they cannot identify any property owner whose land is similarly needed for airport expansion and who is treated any differently under the OMA. Indeed, *Kissinger* precludes petitioners' attempt to compare themselves to owners and believers outside the acquisition area—plainly there were students at Ohio State, but outside the veterinary school, who were not required to pass the course Kissinger did not want to take.

In sum, petitioners' claim of conflict ignores the critical step in the decisions they invoke and commits the very error the Seventh Circuit identified: claiming "differential" (Pet. 2) or "objectively unequal treatment" (*id.* at 4) simply because Chicago's actions affect them and not members of other religions. But the court below sensibly asked whether petitioners were adversely affected as compared to others situated similarly with respect to Chicago's legitimate and neutral purposes. See *Lukumi*, 508 U.S. at

543. Petitioners' claim failed because they were not "targeted" or "singled out," not because the Seventh Circuit applied a different legal standard than other courts of appeals.

B. The Cases Petitioners Align With The Decision Below Do Not Show A Need For Review Here.

Petitioners' discussion of the cases on the other side of the supposed circuit conflict is even more deficient. In fact, since, as we explain above, the Seventh Circuit explicitly noted no showing of motive or animus is required if the plaintiff actually establishes that he was selectively burdened or targeted (see Pet. App. 32a, 36a, 43a), if the Circuits were truly divided on whether strict scrutiny applies to discrimination, the Seventh Circuit would be on petitioners' side of the divide. But the First, Fifth, and Ninth Circuits, which petitioners labor to place in conflict with the decisions just discussed, do not impose a general hostility requirement either. Two cases involved challenges to restricted funding for religious education. As petitioners observe, both *Strout v. Albanese*, 178 F.3d 57 (1st Cir.), cert. denied, 528 U.S. 931 (1999), and *KDM ex rel. WJM v. Reedsport School District*, 196 F.3d 1046 (9th Cir. 1999), cert. denied, 531 U.S. 1010 (2000), rejected the argument that *Lukumi* required strict scrutiny, concluding, *inter alia*, that rational-basis review applied absent evidence that the distinctions were invidiously intended. Petitioners also correctly quote Judge O'Scannlain, dissenting from denial of rehearing *en banc* in *KDM ex rel. WJM v. Reedsport School District*, 210 F.3d 1098 (9th Cir. 2000), lamenting the "'growing confusion among the lower courts over the demands of the First Amendment.'" Pet. 21 (citation

omitted). But petitioners' lengthy discussion of these cases has a Rip Van Winkle quality to it. The notion that this Court now needs to settle a conflict involving the 1999 and 2000 decisions in *Strout* and *KDM* simply ignores that this Court did just that in *Locke*.[10]

Notably, the Court's resolution of the issue in *Locke* was not what the *KDM* dissent expected. While Judge O'Scannlain was confident that any "faithful reader of [*Lukumi*]" would recognize that every law "*non-neutral on its face* * * * triggers strict (and almost always fatal) scrutiny—even in the absence of extrinsic evidence suggesting that the law was the result of anti-religious bigotry or animus," 210 F.3d at 1099, Chief Justice Rehnquist, writing for a 7-2 majority, rejected the Free Exercise claim because it "would extend the *Lukumi* line of cases well beyond not only their facts but their reasoning." 540 U.S. at 720. Noting the States' strong interest in not funding religious ministry, the Court held that refusing to fund preparation for that vocation on equal terms with preparation for other professions was not a denial of Free Exercise, absent evidence that it was motivated by "hostility toward religion." *Id.* at 721. As the Court explained, "training for religious professions and training for secular professions are not fungible" (*id.*), and "nothing in Washington's overall approach * * * indicates it 'single[s] out' anyone 'for special burdens on the basis of * * * religious calling'" (*id.* at 724 n.8) (quoting dissent)).

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[10] Those cases were called to the Court's attention in *Locke*. See Brief for the United States, No. 02-1315, at 17 n.3. And since *Locke*, the First Circuit has held that while *Strout* was no longer controlling as a matter of *stare decisis*, it would reach same conclusion under *Locke*. See *Eulitt v. Maine*, 386 F.3d 344, 350, 356 (2004).

As for *World Wide Street Preachers Fellowship v. Town of Columbia*, 245 Fed. Appx. 336 (2007), although petitioners do not reveal the disposition, the Fifth Circuit reversed summary judgment on the ground that a Free Exercise claimant was entitled to show discriminatory motive.[11]

Also misplaced is petitioners' reliance on Justice Thomas's dissent from the denial of certiorari in *Columbia Union College v. Clarke*, 527 U.S. 1013 (1999), as prelude to their claim that "guidance is needed even more urgently today than it was then." Pet. 22. That case has no relevance here. *Columbia Union College v. Clarke*, 159 F.3d 151 (4th Cir. 1998), addressed this Court's Establishment Clause and Free Speech cases; and neither the court of appeals' majority nor the dissent mentioned *Lukumi* even once, while the Free Exercise Clause received only passing mention. See *id.* at 155 n.1 & 172. In any event, like reliance on the other pre-*Locke* cases, this citation fails to take account of the Court's intervening effort to provide guidance. Of all petitioners' citations, only a student note post-dates *Locke*; and it deals exclusively with *Lukumi*'s application to education funding laws, ultimately concluding that "the neutrality principle does not work in the school funding context" and that "[t]he Court in *Locke* was right to focus on 'animus towards

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[11] Only by selecting a few words out of context can petitioners find anything in the Fifth Circuit's unpublished opinion to complain about. Ignoring that the court analyzed the free speech and free exercise claims together, they highlight language that was the court's shorthand for the free exercise analog to content-based discrimination on speech. It is clear that this decision was pressed into service because it is the only one in the country petitioners could find post-*Locke* with any remotely helpful language.

religion.'" Sarah Waszmer, *Taking It Out of Neutral: The Application of* Locke's *Substantial Interest Test to the School Voucher Debate*, 62 Wash. & Lee L. Rev. 1271, 1274, 1309 (2005).

That said, the Seventh Circuit did not rely on the First and Ninth Circuit decisions, or on *Locke* itself; nor did it need to.[12] As we explain above, the court below correctly held that Chicago's actions and the OMA itself were neutral in every relevant respect. The standard of review in cases like *Strout* and *KDM*, involving non-neutral statutes, is simply irrelevant. Nevertheless, the court went on to conclude both that there was no anti-religious animus here and that strict scrutiny would be satisfied if it were required. Indeed, this case would be no different under the *Locke* dissent, which maintained that withholding a "generally available benefit" from "some individuals solely on the basis of religion" violates the Free Exercise Clause. That did not happen here. The "benefits" of IRFRA (Pet. 7)—and other state laws—were withheld solely on the basis of geography (see Pet. App. 35a-36a, 40a) and, moreover, were withheld from all property owners in the acquisition area.

II. THE DECISION BELOW IS ENTIRELY FAITHFUL TO THIS COURT'S PRECEDENTS.

Unsurprisingly, given the Seventh Circuit's complete consistency with the decisions of other courts of appeals, the decision below does not conflict with any precedent of this Court, either. On the contrary, it

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[12] The opinion contains a solitary citation to *Locke* (Pet. App. 34a), for the principle that other provisions of a statute are a more reliable guide to intent than legislative history.

correctly applies the rules laid down in *Lukumi*—the only of this Court's Free Exercise decisions petitioners actually discuss—to the facts of this case.

Petitioners' claim of conflict proceeds from the premise that the Seventh Circuit construed the First Amendment as imposing "a motive requirement," while *Lukumi* established that proof of "an intent to suppress religion was * * * sufficient," but not necessary. Pet. 26. This contention fails because petitioners get the decision below exactly backwards. As we explain above, the Seventh Circuit recognized that "the inquiry required by *Lukumi*" entails determining both whether the challenged statute is "a neutral law of general applicability" and whether a law's "'facial[] neutral[ity] * * * masks more insidious underpinnings.'" Pet. App. 43a (quoting Pet. App. 85a). Nevertheless, the court did not "inclu[de] * * * a motive requirement." Pet. 28. To the contrary, as we also explain, the court explicitly rejected any notion that the district court had "suggest[ed] that a plaintiff is *required* to allege animus or prejudice in order to state a free exercise claim." Pet. App. 43a. And beyond the obvious problems caused by misreading or at least mischaracterizing the decision below, petitioners' attempts to generate a conflict with this Court's cases depend on misreading *Lukumi* as well (not to mention a willful blindness to *Locke* and *Smith*).

According to petitioners, the Seventh Circuit erred by following a section of Justice Kennedy's *Lukumi* opinion that failed to garner a majority, one in which he (joined only by Justice Stevens) supposedly endorsed a "motive requirement" (Pet. 28), rather than recognizing that a majority of the Court held that a law could be invalidated absent hostility to

religion (see *id.* at 27). But the disputed portion of the *Lukumi* opinion did not assert that invidious legislative motive was required—it merely suggested that evidence of bad motive, such as that found in legislative history, could be considered in analyzing the object of a law. See 508 U.S. at 540-42. Petitioners likewise mistake Justice Scalia's concurring opinion, which they say declared the object or purpose of the law irrelevant, in favor of an effects test. See Pet. 25-26. Of course, a complete rejection of any concern for a law's "object" would have been, to the say the least, extraordinary for Justice Scalia, who had authored the Court's then-recent opinion in *Smith*.

Nor can Justice Scalia's opinion be fairly interpreted to reject this inquiry. To the contrary, the whole thrust of the language petitioners extract from his separate opinion addresses the propriety of considering the subjective motivations of individual legislators in ascertaining the "object" of the law they enacted. The opinion took pains to clarify that determining the "object" of the law is the central inquiry in Free Exercise analysis. See 508 U.S. at 558 ("I do not join [Part II-A-2 of Justice Kennedy's opinion] because it departs from the opinion's general focus on the object of the *laws* at issue to consider the subjective motivation of the *lawmakers* * * *."). Thus, Justice Scalia's view that legislative motive should not be considered recognizes a narrower Free Exercise right than Justices Kennedy and Stevens envisioned, *i.e.*, a regime in which evidence of invidious motive would not invalidate a law that was otherwise neutral and generally applicable. And far from faulting the lead opinion for insufficiently separating the "neutrality" and "general applicability" requirements, Justice Scalia emphasized that

neither term is "to be found within the First Amendment itself" but are used to describe a law that limits religiously motivated conduct but "nonetheless [does] not * * * constitute a 'law * * * prohibiting the free exercise' of religion within the meaning of the First Amendment." *Id.* at 557. For Justice Scalia, neutrality and general applicability were "not only 'interrelated,'" as the lead opinion wrote, but "substantially overlap." *Ibid.*

Here, the Seventh Circuit disclaimed any motive requirement and relied on precisely the considerations Justice Scalia urged should be considered in determining whether a measure is neutral and generally applicable, namely, whether the law "*by [its] terms* impose[s] disabilities on the basis of religion" and whether it, while "neutral in [its] terms, through [its] design, construction, or enforcement target[s] the practices of a particular religion for discriminatory treatment." 508 U.S. at 557. Thus, the Seventh Circuit, after finding facial neutrality, looked to whether "there was a more subtle or masked hostility to religion." Pet. App. 34a. See also *ibid.* (cautioning against "selective use of statements in legislative history"). This approach cannot fairly be described as failing to follow *Lukumi* or heed Justice Scalia's views.

Equally ill-conceived is petitioners' accusation that the Seventh Circuit "distort[ed] the neutrality and general-applicability inquiries" by improperly "import[ing]" the government's interest into the determination whether a law is neutral and generally applicable. Pet. 29. *Lukumi* could hardly be clearer that a court deciding a Free Exercise claim must consider the governmental interest in just the way the Seventh Circuit did here. Hialeah lost *Lukumi*

because it failed to pursue its legitimate objectives in an evenhanded way. Thus, despite recognizing that an "adverse impact will not always lead to a finding of impermissible targeting" (508 U.S. at 535), the Court held the "principle of general applicability was violated because the secular ends asserted in defense of the laws were pursued only with respect to conduct motivated by religious beliefs" (*id.* at 524). For example, "many * * * secular killings fall[ing] within the city's interest in preventing the cruel treatment of animals" went unpunished, while the Santeria "religion alone * * * [bore] the burden of the ordinances." *Id.* at 544. What petitioners decry as a distortion of *Lukumi* is one of that decision's central precepts: that "unequal treatment" becomes suspect when those similarly situated relative to the government's legitimate interests are treated dissimilarly. See *id.* at 542-43 (Free Exercise concern triggered "when a legislature decides that the governmental interests it seeks to advance are worthy of being pursued only against conduct with a religious motivation").

Here, by contrast, as the Seventh Circuit recognized, there is no claim, nor could there be, that the OMA is underinclusive with respect to the concededly legitimate objective of expanding O'Hare. Petitioners identify no owner of property, religious or secular, whose property is equally necessary to the airport modernization but who was nevertheless permitted to retain state-law rights that risk interference with the project. Instead, petitioners' claim of targeting is based on differential treatment of those who are outside the project area and therefore not similarly situated. Of course, the IRFRA amendment does not extend to religiously owned properties outside the project area—that

would not advance the government's interest in removing impediments to modernization of the airport. Petitioners' claim is therefore altogether incompatible with *Lukumi*, as well as *Smith*. The necessary implication of *Lukumi* (and the very holding of *Smith*) is that a law incidentally burdening a particular religious practice, for example, by forbidding the killing of all animals in a geographic area (where certain religious adherents lived or worshiped) or prohibiting the use of a drug (although certain religious adherents used it as a sacrament), is not for that reason subject to strict scrutiny. See *Lukumi*, 508 U.S. at 535-36, 539; *Smith*, 494 U.S. at 882-90. Yet on petitioners' theory, individuals burdened by those laws could have claimed they were "targeted" and "singled out" relative to those who lived and worshiped elsewhere or observed other sacraments. That failed theory—that St. Johannes must, for purposes of assessing petitioners' Free Exercise claim, be classified together with church-owned properties outside the O'Hare project area (see Pet. App. 32a)—explains why petitioners lost this case.

Moreover, although an error in applying *Lukumi* to the particular facts of this case would not be grounds for certiorari in any event, the decision below was unassailably correct. As even petitioners recognize, IRFRA was amended "because the religious cemeteries supposedly interfered with Chicago's desire to expand O'Hare" (Pet. 3), "not out of religious hostility" (*id.* at 14).[13] They also recognize that the

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[13] Petitioners improperly qualify the interference as "supposed." The FAA's determination that St. Johannes cannot be accommodated without compromising the delay-reduction and capacity-increasing ALP is final. See *Bensenville*, 457 F.3d at

law of which section 96 is a part—the OMA—was enacted for reasons unrelated to its effect on religious practice. See *id.* at 7 (OMA "re-wrote more than a dozen laws to remove legal obstacles to O'Hare's expansion"). Under *Lukumi*, the IRFRA amendment must be examined as a part of that entire statute. See 508 U.S. at 540 (treating ordinances "as a group for neutrality purposes" and declining to "decide whether Ordinance 87-72 could survive constitutional scrutiny if it existed separately"). The Seventh Circuit did just that. See Pet. App. 34a-35a. That court recognized, moreover, that the specific impetus for the OMA was a state-court decision having nothing to do with religion-based claims, but rather a case brought by the municipal plaintiffs below in which Chicago was enjoined from proceeding from land acquisition for alleged noncompliance with Illinois Aeronautics Act. See *id.* at 7a-8a (citing *Philip v. Daley*, 790 N.E.2d 961 (Ill. App. Ct. 2003)). Finally, the statute, in both its policy and its operative provisions, made clear that the General Assembly was singlemindedly bent on eliminating legal obstacles of whatever kind to the OMP. See *id.* at 8a, 35a.

Nor have petitioners ever challenged another provision of the same statute, section 15, which grants Chicago the power, "notwithstanding any law to the contrary," to "acquire" "any" property, public or private, "for purposes related to the [OMP]," by "condemnation or otherwise," including "any property used for cemetery purposes within or outside of the City, and to require that the cemetery be removed to a different location." OMA § 15. No doubt this

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73 (dismissing petition for review). That precludes the claim that it was possible to "shift[] one runway 350 feet" (Pet. 11-12 n.3), as well as other alternatives.

omission reflects that even petitioners understand section 15 is a quintessentially neutral law of general applicability and, for that reason, valid under *Smith* and *Lukumi*. Petitioners are therefore left to suggest that a fundamentally different Free Exercise result should have obtained because the OMA, in addition to including this neutral, comprehensive provision, as well as numerous other specific amendments to various state statutes, also includes a provision specifically amending IRFRA to limit their IRFRA rights, but not those of others. This argument has no merit.

The inclusion of OMA section 96 (like the other similar statutory amendments) is almost certainly an artifact of Illinois law—which requires that "[a] bill expressly amending a law shall set forth completely the sections amended." Ill. Const. art. 4, § 8(d). Moreover, given section 15, it is unimaginable how section 96 could have independent Free Exercise Clause significance, let alone trigger a presumption of unconstitutionality. And, petitioners' incessant claim that they were singled out notwithstanding, even section 96 does not, either on its face or application, apply to petitioners alone. Rather, it extinguishes a state-law ground for an objection under IRFRA to "relocation of cemeteries," in the plural. While St. Johannes is "now the only cemetery" (Pet. App. 35a) directly affected by the IRFRA amendment, the OMA provision, as the court recognized, applies by its terms to any religious cemetery in the project area—"[i]f there were ten cemeteries in * * * [the acquisition area, it] would apply to all ten * * *" (*id.* at 36a)—as it would, presumably, to a religious individual who made a similar claim about a cemetery in the project area that had no religious affiliation.

Petitioners' hypothetical—involving an arbitrary exemption of religious groups in a particular area from the benefit of a state law requiring heightened scrutiny for religion, apparently for its own sake, not to serve any nondiscriminatory policy or as part of a larger statute (see Pet. 29)—bears no resemblance to this case. The OMA is not aimed at and does not affect only religious adherents. Nor is it capricious; the line it draws reflects the obvious fact that only some land is adjacent to O'Hare and needed for the OMP. The OMA reaches no more broadly than necessary to serve its purpose, and nothing in the federal Constitution required the General Assembly to repeal IRFRA in its entirety in order to exempt the land needed for O'Hare expansion.

An apt analogy to this case would be a law imposing, in a limited area of Richmond, a cap of 100 feet on the height of buildings (perhaps to enable planes to more safely approach a new runway), applicable to hundreds of apartment and office buildings but also inhibiting a church's planned construction of a 120-foot steeple. The notion that such a neutral law of general applicability should be subject to strict scrutiny under the Free Exercise Clause, simply because it burdens the church in relation to congregations outside the flight path, is wholly contrary to *Smith*.[14]

Finally, although the Seventh Circuit did not—and did not need to—rely on *Locke*, petitioners' attempt to

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[14] Moreover, while petitioners are unable to obtain strict scrutiny of the cemetery relocation, their hypothetical ignores that they retain all other rights under IRFRA, even in the project area. Similarly, as the Seventh Circuit noted, the OMA did not disturb IRFRA rights of those in other parts of the state who embrace similar tenets. See Pet. App. 36a.

brush aside that case is startling. Petitioners' response to *Locke*'s refusal to invalidate an education funding restriction "unless it (1) burdens religious practice or (2) is the product of bad motive" is to assert that "Section 30 concededly imposes a substantial burden on religious practice." Pet. 27 n.5. But Chicago has never conceded such a thing. See Brief of Defendant-Appellee City of Chicago, No. 05-4418, at 45-50 (on-line version). Nor did the Seventh Circuit find a substantial burden. While it "accept[ed]" that relocation of the cemetery was a "'sacrilege to [petitioners'] religious faith'" (Pet. App. 31a-32a), it did not identify any religious practice, much less any substantial burden on religious practice. Any claim of burden, moreover, is inconsistent with *Lyng v. Northwest Indian Cemetery Protective Ass'n*, 485 U.S. 439, 447-55 (1988) (government action making land unavailable for religious practices and offending religious beliefs does not violate Free Exercise Clause).

More important, while relocation of the cemetery was the heart of petitioners' RLUIPA claim, their Free Exercise claim—the only claim they press in this Court—did not challenge the construction of the OMP or the cemetery relocation it entails. It challenged Chicago's role in the enactment of the OMA, including section 96's partial repeal of IRFRA. It is an exceedingly odd notion that Chicago burdened religion by urging the General Assembly to enact a law, especially one that merely "restore[d] Illinois law to the regime governed by *Smith*." Pet. App. 36a. But even if Chicago could be held responsible for the IRFRA amendment, it is hard to say that it imposes any burden, let alone a substantial one. As we explain above, OMA section 15 itself, which petitioners have never challenged,

grants Chicago the power to condemn and relocate any property used for cemetery purposes—meaning that section 96 imposes no independent burden at all.

III. THIS CASE PRESENTS AN EXTRAORDINARILY POOR VEHICLE FOR REVISITING THIS COURT'S FREE EXERCISE JURISPRUDENCE.

To the extent that the federal courts require any further guidance concerning the Free Exercise Clause, granting certiorari here would present no opportunity for this Court to supply it.

1. As we demonstrate above, the motive question petitioners ask the Court to decide is not even presented by this case. Nor does the case raise the issue raised by the First and Ninth Circuit decisions they claim align with the Seventh. That issue, moreover, was considered four Terms ago in *Locke*. Petitioners' bluster notwithstanding, the Seventh Circuit applied the rule of law petitioners seek—that heightened scrutiny would attach if petitioners had identified an actual "selective" burden, without any further showing of animus.

2. No federal court would have decided the question presented here any differently. Certainly no post-*Lukumi* Free Exercise decision comes close to crediting a claim like petitioners': that the decision to apply the OMA to those whose property actually stands in the path of the runway, but not to those in other parts of Illinois, constitutes the kind of targeting that triggers a presumption of unconstitutionality. While the dissenting opinion below reached a contrary result, it rested in part on a rationale that simply disregards the central teaching of *Smith* (see Pet. App. 59a); and even petitioners do not defend it.

3. While petitioners declare that strict scrutiny is "outcome-determinative" in this case (Pet. 3), it is, in fact, immaterial. Despite holding that heightened scrutiny was not required, the Seventh Circuit nonetheless applied it, for the sake of completeness, and held it satisfied. Petitioners' efforts (*id.* at 30-31) to brush aside this conclusion, which occupies six pages of decision (Pet. App. 36a-42a), misses the point. This Court, to be sure, is not "bound" by the dictum of lower courts (Pet. 31)—or their holdings, for that matter—but it absolutely considers whether it is asked to decide an issue unlikely to affect the result. Here, while the Seventh Circuit's strict-scrutiny analysis was dicta when the court pronounced it, if petitioners obtain reversal on the standard of review, the question would be foremost on remand. There is no reason to expect the majority, which ruled strict scrutiny was satisfied and denied a petition for rehearing on this question, would, on a third examination, reach the opposite conclusion.

4. Petitioners' peculiar claim is also so riddled with idiosyncracies that it is exceedingly unlikely that the Court could reach any generally significant constitutional question. Their claim of a burden on religion is at least three times removed from claims typically forwarded under the Free Exercise Clause. Petitioners challenge Chicago's role in advocating enactment of the OMA (Pet. App. 84a), government conduct against which, to our knowledge, no Free Exercise claim has ever been made. Moreover, the law that Chicago allegedly desired (and the General Assembly enacted) does not burden religious exercise, but merely eliminates one defense that petitioners could have interposed against the proposed condemnation—namely that the alleged burden on religion is

not the least restrictive means of achieving a compelling interest. That standard is not required under the Free Exercise Clause for neutral, generally applicable government action like the broad-based OMP land acquisition. Finally, this Court has repeatedly rejected claims like petitioners' objection to relocation of the cemetery, namely that it is a "sacrilege to * * * religious faith." Pet. App. 31a-32a. See, *e.g.*, *Lyng; Bowen v. Roy*, 476 U.S. 693 (1986).

5. Even complete success in this litigation would not likely aid petitioners. On the single Free Exercise claim remaining in this case, the very most petitioners could obtain would be a declaration that OMA section 96 is ineffective to take them out of IRFRA, with the result that they could assert IRFRA to resist condemnation in the case now pending in state court. But any reliance on IRFRA would surely be barred by petitioners' failure to raise such a claim in this case. Under Illinois law, res judicata bars litigation of claims that "arise[] from a single group of operative facts" as prior litigation between the same parties. See, *e.g.*, *River Park, Inc. v. City of Highland Park*, 703 N.E.2d 883, 893 (Ill. 1998). Petitioners brought three claims in this case challenging Chicago's proposed acquisition of the cemetery. Two were directed at the OMA because of its amendment to IRFRA. The third, under RLUIPA, even sought strict scrutiny. Thus, if petitioners regain a claim under IRFRA by invalidating OMA section 96, that claim would challenge the same action they challenged in this case and is therefore precluded.[15] Moreover, petitioners could obtain

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[15] Petitioners had filed a state-court action under IRFRA when Chicago first announced the OMP. Pet. 6. Petitioners write that the "claim was dismissed as moot" (*id.* at 7), but it

actual relief only if the state courts were willing and allowed to overrule the FAA's determination, reached after thousands of hours of expert study, regarding the proper layout for O'Hare's ALP—an issue that is itself res judicata. See *Bensenville*, 457 F.3d at 70-73 (upholding FAA's approval of ALP). While petitioners may contest our reading of state law, there is no reason to think the state court will forgive their attempt to multiply judicial proceedings and profit from their delay by challenging the condemnation under IRFRA at this late date.

6. Petitioners close by assuring the Court that they are not "Luddites" and that their multi-year, multi-jurisdiction litigation campaign against the OMP is not motivated by hostility to O'Hare expansion but merely incidental to sincere religious belief. Pet. 31. Whatever petitioners' motivation, they consistently ignore that the real party in interest on the other side of these proceedings is not Chicago. Rather, Chicago is building the OMP for the millions of travelers whose lives (including their own religious commitments) are disrupted by delays and capacity-restrictions as a result of O'Hare's outmoded present design. Petitioners, raising claims unavailable to hundreds of other property owners affected by the OMP, have been repeatedly heard on their claims that they were "targeted" or "singled out"; this is the third of eight federal appeals, and petitioners or their former co-plaintiffs are also

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was dismissed on their motion (App., *infra*, 24a), and it was not moot at all. The claim was not currently available to petitioners, but success on either of the two claims they leveled at OMA section 96 in this case would have enabled them to pursue an IRFRA claim. At a minimum, therefore, the claim could have and should have been brought in this case.

parties to at least four state-court cases.[16] The instant petition, in which petitioners are able to advance a colorable plea for certiorari only by affirmatively misrepresenting the Seventh Circuit's decision and seriously distorting this Court's precedent, should be denied.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted,

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April 11, 2008

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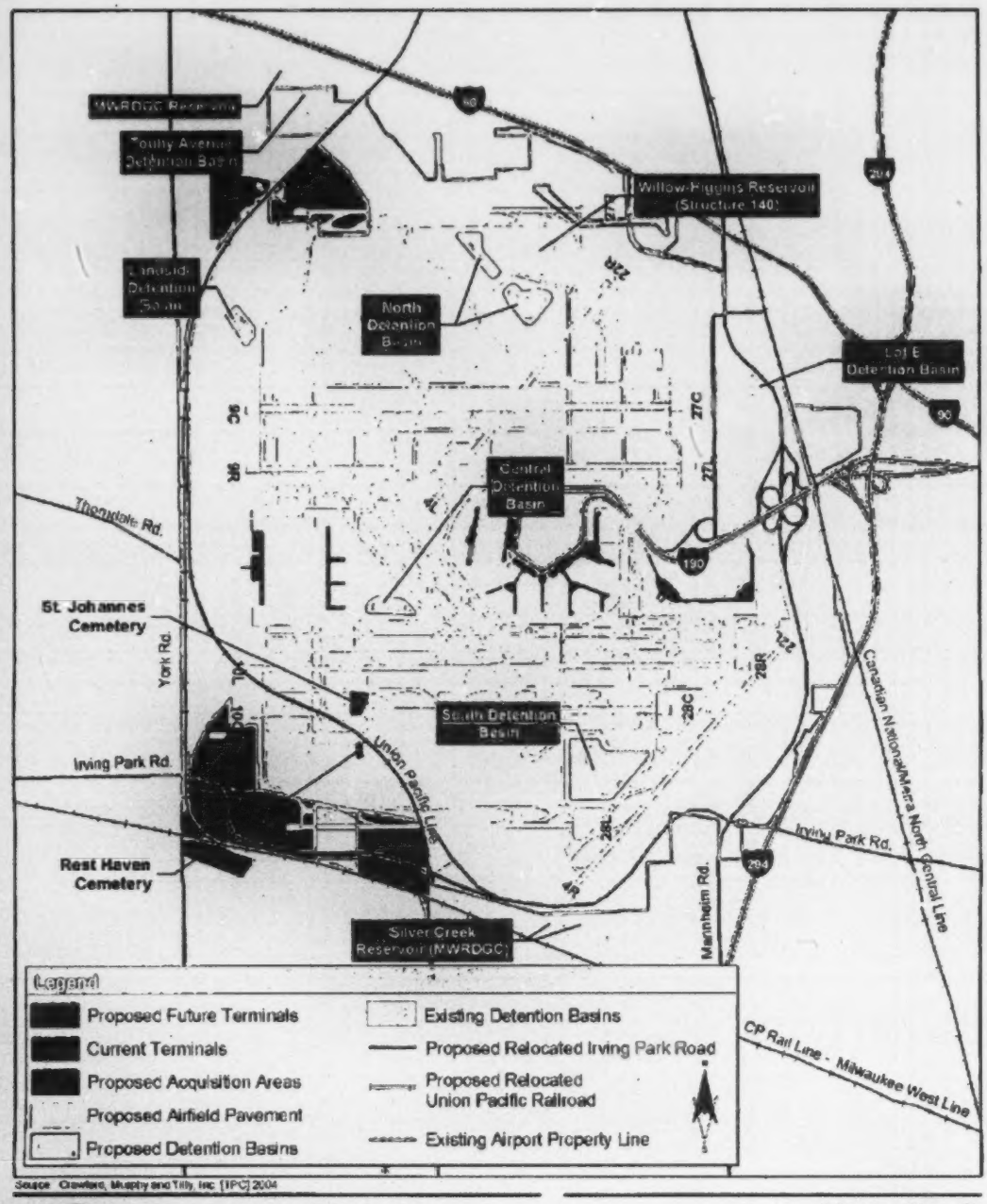
[16] The cemetery is among only 54 pieces of property out of 605 parcels in the acquisition area that Chicago does not already own. Thirty-five of the unacquired properties are either owned by the Village of Bensenville, one of the municipal plaintiffs below, or represented by one of petitioners' counsel. Another 13 are in litigation. Only 6 have not yet received formal offers, as required by state law.

APPENDIX



Source: Crawford, Murphy and Tilly, Inc. (IPC) 2004

Chicago O'Hare International Airport

Alternative C

O'Hare Modernization
Environmental Impact Statement

Exhibit 3-8

APPENDIX B

AN ACT in relations to airports.

Be it enacted by the People of the State of Illinois, represented in the General Assembly:

Section 1. Short Title. This Act may be cited as the O'Hare Modernization Act.

Section 5. Findings and purposes.

(a) The Illinois General Assembly finds and determines:

(1) The reliability and efficiency of the State and national air transportation systems significantly depend on the efficiency of the Chicago O'Hare International Airport. O'Hare has an essential role in air transportation for the State of Illinois. The reliability and efficiency of air transportation for residents and businesses in Illinois and other States depend on efficient air traffic operations at O'Hare.

(2) O'Hare cannot efficiently perform its role in the State and national air transportation systems unless it is reconfigured with multiple parallel runways.

(3) The O'Hare Modernization Program will enhance the economic welfare of the State of Illinois and its residents by creating thousands of jobs and business opportunities.

(4) O'Hare provides, and will continue to provide, unique air transportation functions that cannot be replaced by any other airport in Illinois.

(5) Public roadway access through the existing western boundary of O'Hare to passenger termi-

nal and parking facilities located inside the boundary of O'Hare and reasonably accessible to that western access is an essential element of the O'Hare Modernization Program. That western access to O'Hare is needed to realize the full economic opportunities created by the O'Hare Modernization Program and to improve ground transportation in the O'Hare area. It is important to the State that the western access be constructed not later than the time existing runway 14R-32L is removed from service.

(6) For the reasons stated in paragraphs (1), (2), (3), (4), and (5), it is essential that the O'Hare Modernization Program be completed efficiently and without unnecessary delay.

(7) For the reasons stated in paragraphs (1), (2), (3), (4), and (5), it is essential that acquisition of property as required for the O'Hare Modernization Program be completed as expeditiously as practicable.

(8) The General Assembly recognizes that the planning, construction, and use of O'Hare and the planning, construction, and use of the O'Hare Modernization Program will be subject to intensive regulatory scrutiny by the United States and that no purpose would be served by duplicative or redundant regulation of the safety and impacts of the airport or the O'Hare Modernization Program.

(9) The General Assembly recognizes that the City of Chicago has enacted and successfully implemented ordinances that combat past and ongoing discrimination against minorities and women in the market that competes for contracts

with the City of Chicago. These ordinances are among the strongest and most successful in the country, and have made significant progress in combatting discrimination against minorities and women throughout northeastern Illinois.

(b) It is the intent of the General Assembly that all agencies of this State and its subdivisions shall facilitate the efficient and expeditious completion of the O'Hare Modernization Program to the extent not specifically prohibited by law, and that legal impediments to the completion of the project be eliminated.

Section 10. Definitions. As used in this Act:

"Airport property" means (i) any property or an interest in property that is, or hereafter becomes, part of O'Hare International Airport and (ii) any property or an interest in property that is not part of O'Hare International Airport, but that is acquired by the City of Chicago for purposes of air navigation or air safety in accordance with standards established by the Federal Aviation Administration. "Airport property", however, shall not include any substitute property acquired pursuant to Section 15 of this Act, including property acquired for cemetery purposes.

"O'Hare Modernization Program" means the plan for modernization of O'Hare International Airport by (1) construction and reconfiguration of runways, taxiways, and facilities for movement and servicing of aircraft; construction of western airport access and related roadways; construction and reconfiguration of roadways, terminals, passenger transportation facilities, parking facilities, and cargo facilities; construction of drainage and stormwater management facilities; and related projects, within the area bounded on the north, between Carmen Drive and

the Union Pacific/Canadian Pacific Railroad, by Old Higgins Road, and between Old Higgins Road and Touhy Avenue, by the Union Pacific/Canadian Pacific Railroad, and east of the Union Pacific/Canadian Pacific Railroad by the northern boundary of O'Hare existing on January 1, 2003; on the east by the eastern boundary of O'Hare existing on January 1, 2003; on the southeast by the southeastern boundary of O'Hare existing on January 1, 2003; on the south between the eastern boundary of O'Hare and the Union Pacific Railroad by the southern boundary of O'Hare existing on January 1, 2003; on the south, between the Union Pacific Railroad and the east boundary of York Road by the Canadian Pacific railroad yard; on the west, between the Canadian Pacific Railroad Yard and the railroad spur intersecting York Road between Arthur and Pratt Avenues, by the east boundary of York Road; and on the northwest, between York Road and the Union Pacific/Canadian Pacific Railroad, by the railroad spur, and between the railroad spur and the point at which the extended eastern boundary of Carmen Drive intersects the Union Pacific/Canadian Pacific Railroad, by the Union Pacific/Canadian Pacific Railroad, and between the Union Pacific/Canadian Pacific Railroad and Old Higgins Road, by the extended eastern boundary of Carmen Drive and by Carmen Drive; and (2) provision for air navigation and air safety outside that area in accordance with standards established by the Federal Aviation Administration.

"O'Hare" means Chicago O'Hare International Airport. "City" means the City of Chicago.

Section 15. Acquisition of property. In addition to any other powers the City may have, and notwithstanding any other law to the contrary, the City may

acquire by gift, grant, lease, purchase, condemnation (including condemnation by quick take under Section 7-103.149 of the Code of Civil Procedure), or otherwise any right, title, or interest in any private property, property held in the name of or belonging to any public body or unit of government, or any property devoted to a public use, or any other rights or easements, including any property, rights, or easements owned by the State, units of local government, or school districts, including forest preserve districts, for purposes related to the O'Hare Modernization Program. The powers given to the City under this Section include the power to acquire, by condemnation or otherwise, any property used for cemetery purposes within or outside of the City, and to require that the cemetery be removed to a different location. The powers given to the City under this Section include the power to condemn or otherwise acquire (other than by condemnation by quick take under Section 7-103 of the Code of Civil Procedure), and to convey, substitute property when the City reasonably determines that monetary compensation will not be sufficient or practical just compensation for property acquired by the City in connection with the O'Hare Modernization Program. The acquisition of substitute property is declared to be for public use. Property acquired under this Section includes property that the City reasonably determines will be necessary for future use, regardless of whether final regulatory or funding decisions have been made; provided, however, that quick-take of such property is subject to Section 7-103.149 of the Code of Civil Procedure.

Section 20. Condemnation by other governmental units. No airport property may be subject to taking by condemnation or otherwise by any unit of local government other than the City of Chicago, or by any

agency, instrumentality, or political subdivision of the State.

Section 21. Reimbursement for tax base losses.

(a) Whenever the City acquires parcels of property within any school district or community college district for the O'Hare Modernization Program, the City shall, for the following taxable year and for each of the 5 taxable years thereafter, pay to that district the amount of the total property tax liability of the acquired parcels to the district for the 2002 taxable year, increased or decreased each year by the percentage change of the district's total tax extension for the current taxable year from the total tax extension for the prior taxable year; provided that no annual increase shall exceed the lesser of 5% or the annual increase in the Consumer Price Index. Funds payable by the City under this Section shall be paid exclusively from non-tax revenues generated at airports owned by the City, and shall not exceed the amount of those funds that can be paid for that purpose under 49 U.S.C. 47107(1)(2).

(b) Notwithstanding any other provision of this Section: (i) no funds shall be payable by the City under this Section with respect to any taxable year succeeding the 2009 taxable year; (ii) in no event shall such funds be payable on or after January 1, 2010; (iii) in no event shall the total funds paid by the City pursuant to this Section to all districts for all taxable years exceed $20,000,000; and (iv) any amounts payable to a district by the City with respect to any parcel of property for any taxable year shall be reduced by the amount of taxes actually paid to the district for that taxable year with respect to that parcel or any leasehold interest therein.

(c) Whenever the City acquires property that is subject to this Section, the City shall notify the assessor of the county in which the property is located. The assessor or the clerk of that county shall, on an annual basis, notify the affected school district or community college district of all property that has been identified as being subject to this Section, and shall provide the district and the City with such information as may be required in determining the amounts payable by the City under this Section. The City shall make payments as required by this Section no later than 90 days after that information is received and verified by the City.

(d) As used in this Section, "Consumer Price Index" means the Consumer Price Index for All Urban Consumers for all items published by the United States Department of Labor.

Section 25. Jurisdiction over airport property. Airport property shall not be subject to the the laws of any unit of local government except as provided by ordinance of the City. Plans of all public agencies that may affect the O'Hare Modernization Program shall be consistent with the O'Hare Modernization Program, and to the extent that any plan of any public agency or unit or division of State or local government is inconsistent with the O'Hare Modernization Program, that plan is and shall be void and of no effect.

Section 27. Minority and women-owned businesses and workers. All City contracts for the O'Hare Modernization Program shall be subject to all applicable ordinances of the City governing contracting with minority and women-owned businesses and prohibiting discrimination and requiring appropriate affirmative action with respect to minority and women

participants in the work force, including but not limited to Section 2-92-330 of the Municipal Code of the City of Chicago (relating to hiring of Chicago residents), Section 2-92-390 of the Municipal Code of the City of Chicago (relating to hiring of women and minorities), and Sections 2-92-420 through 2-92-570 of the Municipal Code of the City of Chicago (relating to contracting with minority-owned and women-owned business enterprises), to the extent permitted by law and federal funding restrictions. The City of Chicago shall file semi-annual reports with the General Assembly documenting compliance with such ordinances with respect to work performed as part of the O'Hare Modernization Program and disclosing the extent to which that work is performed by minority and women workers and minority-owned and women-owned business enterprises.

Section 28. Advisory Committee. An O'Hare Modernization Advisory Committee is established to monitor, review, and report the utilization of minority owned business enterprises and women owned business enterprises, as defined in Section 2-92-420 in the Municipal Code of the City of Chicago, the employment of women, and the employment of minorities, as defined in Section 2-92-420 of the Municipal Code of the City of Chicago, during the O'Hare Modernization project. The City of Chicago shall work with the Advisory Committee in accumulating necessary information for the Committee to submit reports, as necessary, to the General Assembly and the City of Chicago. The Committee shall consist of 13 members: 7 members selected by the Mayor of the City of Chicago; 2 members selected by the President of the Illinois Senate; 2 members selected by the Speaker of the Illinois House of Representatives; one member selected by the Minor-

ity Leader of the Illinois Senate; and one member selected by the Minority Leader of the Illinois House of Representatives.

The Advisory Committee shall meet periodically and shall report the information gathered to the Mayor of the City of Chicago and to the General Assembly by December 31st of every year.

Section 30. Home Rule. It is declared to be the law of this State, pursuant to paragraph (h) of Section 6 of Article VII of the Illinois Constitution, that the regulation and supervision of the City of Chicago's implementation of the O'Hare Modernization Program is an exclusive State function that may not be exercised concurrently by any unit of local government.

Section 90. The Archeological and Paleontological Resources Protection Act is amended by adding Section 1.5 as follows:

(20 ILCS 3435/1.5 new)

Sec.1.5. O'Hare Modernization. Nothing in this Act limits the authority of the City of Chicago to exercise its powers under the O'Hare Modernization Act or requires that City, or any person acting on behalf of that City, to obtain a permit under this Act when acquiring property or otherwise exercising its powers under the O'Hare Modernization Act.

Section 91. The Human Skeletal Remains Protection Act is amended by adding Section 4.5 as follows:

(20 ILCS 3440/4.5 new)

Sec.4.5. O'Hare Modernization. Nothing in this Act limits the authority of the City of Chicago to exercise its powers under the O'Hare Mod-

ernization Act or requires that City, or any person acting on behalf of that City, to obtain a permit under this Act when acquiring property or otherwise exercising its powers under the O'Hare Modernization Act.

Section 92. The Illinois Municipal Code is amended by changing Sections 11-51-1, 11-102-2, and 11-102-4 as follows:

(65 ILCS 5/11-51-1) (from Ch. 24, par. 11-51-1)

Sec. 11-51-1. *Cemetery removal.* Whenever any cemetery is embraced within the limits of any city, village, or incorporated town, the corporate authorities thereof, if, in their opinion, any good cause exists why such cemetery should be removed, may cause the remains of all persons interred therein to be removed to some other suitable place. However, the corporate authorities shall first obtain the assent of the trustees or other persons having the control or ownership of such cemetery, or a majority thereof. When such cemetery is owned by one or more private parties, or private corporation or chartered society, the corporate authorities of such city may require the removal of such cemetery to be done at the expense of such private parties, or private corporation or chartered society, if such removal be based upon their application. *Nothing in this Section limits the powers of the City of Chicago to acquire property or otherwise exercise its powers under Section 15 of the O'Hare Modernization Act.*

(Source: P.A. 87-1153.)

(65 ILCS 5/11-102-2) (from Ch. 24, par. 11-102-2)

Sec. 11-102-2. Every municipality specified in Section 11-102-1 may purchase, construct, reconstruct, expand and improve landing fields, landing strips, landing floats, hangers, terminal buildings and other structures relating thereto and may provide terminal facilities for public airports; may construct, reconstruct and improve causeways, roadways, and bridges for approaches to or connections with the landing fields, landing strips and landing floats; and may construct and maintain breakwaters for the protection of such airports with a water front. Before any work of construction is commenced in, over or upon any public waters of the state, the plans and specifications therefor shall be submitted to and approved by the Department of Transportation of the state. Submission to and approval by the Department of Transportation is not required for any work or construction undertaken as part of the O'Hare Modernization Program as defined in Section 10 of the O'Hare Modernization Act.

(Source: P.A. 81-840.)

(65 ILCS 5/11-102-4) (from Ch. 24, par. 11-102-4)

Sec. 11-102-4. Every municipality specified in Section 11-102-1 may contract for the removal or relocation of all buildings, railways, mains, pipes, conduits, wires, poles, and all other structures, facilities and equipment which may interfere with the location, expansion or improvement of any public airport, or with the safe approach thereto or take-off therefrom by aircraft, and may acquire by gift, grant, lease, purchase, condemnation or otherwise any private property, public property or property devoted to any public use or rights or easements therein for any

purpose authorized by this Section and Sections 11-102-1 through 11-102-3. *Nothing in this Section limits the powers of the City of Chicago to acquire property or otherwise exercise its powers under Section 15 of the O'Hare Modernization Act.*

(Source: Laws 1961, p. 576.)

Section 93. The Downstate Forest Preserve District Act is amended by changing Section 5e as follows:

(70 ILCS 805/5e) (from Ch. 96 1/2, par. 6308e)

Sec. 5e. Property owned by a forest preserve district shall not be subject to eminent domain or condemnation proceedings, *except as otherwise provided in Section15 of the O'Hare Modernization Act.*

(Source: P.A. 85-993.)

Section 93.5. The Vital Records Act is amended by changing Section 21 as follows:

(410 ILCS 535/21) (from Ch. 111 1/2, par. 73-21)

Sec. 21. (1) The funeral director or person acting as such who first assumes custody of a dead body or fetus shall make a written report to the registrar of the district in which death occurred or in which the body or fetus was found within 24 hours after taking custody of the body or fetus on a form prescribed and furnished by the State Registrar and in accordance with the rules promulgated by the State Registrar. Except as specified in paragraph (2) of this Section, the written report shall serve as a permit to transport, bury or entomb the body or fetus within this State, provided that the funeral director or

person acting as such shall certify that the physician in charge of the patient's care for the illness or condition which resulted in death has been contacted and has affirmatively stated that he will sign the medical certificate of death or the fetal death certificate. If a funeral director fails to file written reports under this Section in a timely manner, the local registrar may suspend the funeral director's privilege of filing written reports by mail. In a county with a population greater than 3,000,000, if a funeral director or person acting as such inters or entombs a dead body without having previously certified that the physician in charge of the patient's care for the illness or condition that resulted in death has been contacted and has affirmatively stated that he or she will sign the medical certificate of death, then that funeral director or person acting as such is responsible for payment of the specific costs incurred by the county medical examiner in disinterring and reinterring or reentombing the dead body.

(2) The written report as specified in paragraph (1) of this Section shall not serve as a permit to:

(a) Remove body or fetus from this State;

(b) Cremate the body or fetus; or

(c) Make disposal of any body or fetus in any manner when death is subject to the coroner's or medical examiner's investigation.

(3) In accordance with the provisions of paragraph (2) of this Section the funeral director or person acting as such who first assumes custody of a dead body or fetus shall obtain a permit for

disposition of such dead human body prior to final disposition or removal from the State of the body or fetus. Such permit shall be issued by the registrar of the district where death occurred or the body or fetus was found. No such permit shall be issued until a properly completed certificate of death has been filed with the registrar. The registrar shall insure the issuance of a permit for disposition within an expedited period of time to accommodate Sunday or holiday burials of decedents whose time of death and religious tenets or beliefs necessitate Sunday or holiday burials.

(4) A permit which accompanies a dead body or fetus brought into this State shall be authority for final disposition of the body or fetus in this State, except in municipalities where local ordinance requires the issuance of a local permit prior to disposition.

(5) A permit for disposition of a dead human body shall be required prior to disinterment of a dead body or fetus, and when the disinterred body is to be shipped by a common carrier. Such permit shall be issued to a licensed funeral director or person acting as such, upon proper application, by the local registrar of the district in which disinterment is to be made. In the case of disinterment, proper application shall include a statement providing the name and address of any surviving spouse of the deceased, or, if none, any surviving children of the deceased, or if no surviving spouse or children, a parent, brother, or sister of the deceased. The application shall indicate whether the applicant is one of these parties and, if so, whether the applicant is a

surviving spouse or a surviving child. Prior to the issuance of a permit for disinterment, the local registrar shall, by certified mail, notify the surviving spouse, unless he or she is the applicant, or if there is no surviving spouse, all surviving children except for the applicant, of the application for the permit. The person or persons notified shall have 30 days from the mailing of the notice to object by obtaining an injunction enjoining the issuance of the permit. After the 30-day period has expired, the local registrar shall issue the permit unless he or she has been enjoined from doing so or there are other statutory grounds for refusal. The notice to the spouse or surviving children shall inform the person or persons being notified of the right to seek an injunction within 30 days. Notwithstanding any other provision of this subsection (5), a court may order issuance of a permit for disinterment without notice or prior to the expiration of the 30-day period where the petition is made by an agency of any governmental unit and good cause is shown for disinterment without notice or for the early order. *Nothing in this subsection (5) limits the authority of the City of Chicago to acquire property or otherwise exercise its powers under the O'Hare Modernization Act or requires that City, or any person acting on behalf of that City, to obtain a permit under this subsection (5) when exercising powers under the O'Hare Modernization Act.*

(Source: P.A. 88-261; 89-381, eff. 8-18-95.)

Section 94. The Illinois Aeronautics Act is amended by changing Sections 38.01 and 47 and by adding Section 47.1 as follows:

(620 ILCS 5/38.01) (from Ch. 15 1/2, par. 22.38a) Sec. 38.01. *Project applications.*

(a) No municipality or political subdivision in this state, whether acting alone or jointly with another municipality or political subdivision or with the state, shall submit any project application under the provisions of the Airport and Airway Improvement Act of 1982, or any amendment thereof, unless the project and the project application have been first approved by the Department. No such municipality or political subdivision shall directly accept, receive, or disburse any funds granted by the United States under the Airport and Airway Improvement Act of 1982, but it shall designate the Department as its agent to accept, receive, and disburse such funds, provided, however, nothing in this Section shall be construed to prohibit any municipality or any political subdivision of more than 500,000 inhabitants from disbursing such funds through its corporate authorities. It shall enter into an agreement with the Department prescribing the terms and conditions of such agency in accordance with federal laws, rules and regulations and applicable laws of this state. *This subsection (a) does not apply to any project application submitted in connection with the O'Hare Modernization Program as defined in Section 10 of the O'Hare Modernization Act.*

(b) The City of Chicago may submit a project application under the provisions of the Airport and Airway Improvement Act of 1982, as now or hereafter amended, or any other federal law providing for airport planning or development, if the application is submitted in connection with

the O'Hare Modernization Program as defined in Section 10 of the O'Hare Modernization Act, and the City may directly accept, receive, and disburse any such funds.

(Source: P.A. 92-341, eff. 8-10-01.)

(620 ILCS 5/47) (from Ch. 15 1/2, par. 22.47)

Sec. 47. Operation without certificate of approval unlawful; applications.) An application for a certificate of approval of an airport or restricted landing area, or the alteration or extension thereof, shall set forth, among other things, the location of all railways, mains, pipes, conduits, wires, cables, poles and other facilities and structures of public service corporations or municipal or quasi-municipal corporations, located within the area proposed to be acquired or restricted, and the names of persons owning the same, to the extent that such information can be reasonably ascertained by the applicant.

It shall be unlawful for any municipality or other political subdivision, or officer or employee thereof, or for any person, to make any alteration or extension of an existing airport or restricted landing area, or to use or operate any airport or restricted landing area, for which a certificate of approval has not been issued by the Department; Provided, that no certificate of approval shall be required for an airport or restricted landing area which was in existence and approved by the Illinois Aeronautics Commission, whether or not being operated, on or before July 1, 1945, *or for the O'Hare Modernization Program as defined in Section 10 of the O'Hare Modernization Act; except that a certificate of approval shall be*

required under this Section for construction of a new runway at O'Hare International Airport with a geographical orientation that varies from a geographical east-west orientation by more than 10 degrees, or for construction of a new runway at that airport that would result in more than 8 runways being available for aircraft operations at that airport. The Department shall supervise, monitor, and enforce compliance with the O'Hare Modernization Act by all other departments, agencies, and units of State and local government.

Provisions of this Section do not apply to special purpose aircraft designated as such by the Department when operating to or from uncertificated areas other than their principal base of operations, provided mutually acceptable arrangements are made with the property owner, and provided the owner or operator of the aircraft assumes liabilities which may arise out of such operations.

(Source: P.A. 81-840.)

(620 ILCS 5/47.1 new)

Sec. 47.1. Review by Department of O'Hare Modernization Program. The Department shall monitor the design, planning, financing, and construction of the O'Hare Modernization Program as defined in Section 10 of the O'Hare Modernization Act in order to ensure that the O'Hare Modernization Program proceeds in a timely, efficient, and safe manner, and shall monitor the effects of the O'Hare Modernization Program on units of local government throughout the State. The Department shall file reports with the General Assembly as the Department deems appropriate concerning the design, planning, financing, and construction of the O'Hare Modernization Program as

defined in Section 10 of the O'Hare Modernization Act, and the effects of the O'Hare Modernization Program on units of local government.

Section 95. The Code of Civil Procedure is amended by changing Section 2-103 and adding Section 7-103.149 as follows:

(735 ILCS 5/2-103) (from Ch. 110, par. 2-103)

Sec. 2-103. Public corporations - Local actions - Libel - Insurance companies.

(a) Actions must be brought against a public, municipal, governmental or quasi-municipal corporation in the county in which its principal office is located or in the county in which the transaction or some part thereof occurred out of which the cause of action arose. *Except as otherwise provided in Section 7-102 of this Code, if the cause of action is related to an airport owned by a unit of local government or the property or aircraft operations thereof, however, including an action challenging the constitutionality of this amendatory Act of the 93rd General Assembly, the action must be brought in the county in which the unit of local government's principal office is located.* Actions to recover damage to real estate which may be overflowed or otherwise damaged by reason of any act of the corporation may be brought in the county where the real estate or some part of it is situated, or in the county where the corporation is located, at the option of the party claiming to be injured. *Except as otherwise provided in Section 7-102 of this Code, any cause of action that is related to an airport owned by a unit of local government, and that is pending on or after the effective date of this amendatory Act of the 93rd General Assembly in a county other than the county in which the unit of local government's princi-*

pal office is located, shall be transferred, upon motion of any party under Section 2-106 of this Code, to the county in which the unit of local government's principal office is located.

(b) Any action to quiet title to real estate, or to partition or recover possession thereof or to foreclose a mortgage or other lien thereon, must be brought in the county in which the real estate or some part of it is situated.

(c) Any action which is made local by any statute must be brought in the county designated in the statute.

(d) Every action against any owner, publisher, editor, author or printer of a newspaper or magazine of general circulation for libel contained in that newspaper or magazine may be commenced only in the county in which the defendant resides or has his, her or its principal office or in which the article was composed or printed, except when the defendant resides or the article was printed without this State, in either of which cases the action may be commenced in any county in which the libel was circulated or published.

(e) Actions against any insurance company incorporated under the law of this State or doing business in this State may also be brought in any county in which the plaintiff or one of the plaintiffs may reside.

(Source: P.A. 85-887.)

(735 ILCS 5/7-103.149 new)

Sec. 7-103.149. *Quick-take; O'Hare Modernization Program purposes. Quick-take proceedings under Section 7-103 may be used by the City of Chicago for the purpose of acquiring property within the area*

bounded on the north, between Carmen Drive and the Union Pacific/Canadian Pacific Railroad, by Old Higgins Road, and between Old Higgins Road and Touhy Avenue, by the Union Pacific/Canadian Pacific Railroad, and east of the Union Pacific/Canadian Pacific Railroad by the northern boundary of O'Hare existing on January 1, 2003; on the east by the eastern boundary of O'Hare existing on January 1, 2003; on the southeast by the southeastern boundary of O'Hare existing on January 1, 2003; on the south between the eastern boundary of O'Hare and the Union Pacific Railroad by the southern boundary of O'Hare existing on January 1, 2003; on the south, between the Union Pacific Railroad and the east boundary of York Road by the Canadian Pacific railroad yard; on the west, between the Canadian Pacific Railroad Yard and the railroad spur intersecting York Road between Arthur and Pratt Avenues, by the east boundary of York Road; and on the northwest, between York Road and the Union Pacific/Canadian Pacific Railroad, by the railroad spur, and between the railroad spur and the point at which the extended eastern boundary of Carmen Drive intersects the Union Pacific/Canadian Pacific Railroad, by the Union Pacific/Canadian Pacific Railroad, and between the Union Pacific/Canadian Pacific Railroad and Old Higgins Road, by the extended eastern boundary of Carmen Drive and by Carmen Drive, for the O'Hare Modernization Program as defined in Section 10 of the O'Hare Modernization Act.

Section 96. The Religious Freedom Restoration Act is amended by adding Section 30 as follows:

(775 ILCS 35/30 new)

Sec. 30 O'Hare Modernization. Nothing in this Act limits the authority of the City of Chicago to exercise

its powers under the O'Hare Modernization Act for the purposes of relocation of cemeteries or the graves located therein.

Section 98. Severability. The provisions of this Act are severable under Section 1.31 of the Statute on Statutes.

Section 99. Effective date. This Act takes effect upon its becoming law, and Section 95 of this Act applies to cases pending on or after the effective date.

ORDER

2118-N (Rev. 9/99)

STATE OF ILLINOIS — UNITED STATES OF AMERICA — COUNTY OF DU PAGE

IN THE CIRCUIT COURT OF THE EIGHTEENTH JUDICIAL CIRCUIT

St. John's United Church of Christ, et al Plaintiffs
vs
the City of Chicago Defendant

Rest Haven Cemetery, et al Plaintiffs
vs
the City of Chicago Defendant

CASE NUMBER
2002 MR 1175
(consolidated with 2003 MR 0016

File Stamp Here

ORDER

This matter coming on to be heard for status and on the Plaintiffs' Motion To Dismiss For Mootness, the Court being fully advised in the premises and having jurisdiction of the subject matter, IT IS ORDERED HEREBY:

that the entitled cases are hereby dismissed, without prejudice on the grounds of Mootness.

Name: Lacaia And Hubbard P.C.
DuPage Attorney No.: 007
Attorney for: Defendant - City of Chicago
Address: 1761 So. Naperville Road
City/State/Zip: Wheaton, IL. 60187
Telephone: (630) 690-1806

ENTER: [signature]
JUDGE

DATE: August 13, 2003

JOEL A. KAGANN, CLERK OF THE 18TH JUDICIAL CIRCUIT COURT ©
WHEATON, ILLINOIS 60189-0707

APPENDIX C